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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

VALERIE SYLVESTER; DAVID)	CIVIL NO. CV 07-00409 ACK-KSC
PANG; ANDREW GARCIA;)	(Non-Vehicle Tort)
RUTH CAMARGO; CHRIS)	
HUBBARD; STACEY COLLINS;)	DEFENDANTS MENU FOODS, INC.,
RANDALL BANDMANN; KELLY)	AND MENU FOODS HOLDINGS, INC.'S
ENGLE; PAM GOULD; and)	REPLY MEMORANDUM IN FURTHER
ERIK CORAL-SANDS,)	SUPPORT OF THE MOTION TO STAY
	ALL PROCEEDINGS, FILED 8/2/07;
Plaintiffs,)	EXHIBIT 1; CERTIFICATE OF SERVICE
)
vs.)	
)
MENU FOODS, INC., a New Jersey)	HEARING SET:
corporation; MENU FOODS)	DATE: <u>Mon., 09/10/07</u>
HOLDINGS, INC., a Delaware)	TIME: <u>9:30 A.M.</u>
corporation; MENU FOODS)	JUDGE: <u>Kevin Chang</u>
INCOME FUND, an unincorporated)	
Canadian business; DOE ENTITIES)	
and INDIVIDUALS 1-100,)	
Defendants.)	
)

**DEFENDANTS MENU FOODS, INC. AND MENU FOODS HOLDINGS, INC.'S
REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF
THE MOTION TO STAY ALL PROCEEDINGS, FILED 8/2/07**

Defendants Menu Foods, Inc., and Menu Foods Holdings, Inc. (“Menu Foods”) submit this Reply Memorandum in further support of the Motion to Stay All Proceedings, filed on August 2, 2007, pending a decision to transfer this action pursuant to 28 U.S.C. § 1407.

ARGUMENT

The claims alleged by Plaintiffs in the First Amended Complaint arise out of the pet food recall. The Judicial Panel for Multidistrict Litigation (“JPML”) has established a multi-district litigation (the “Pet Food Litigation MDL”) in the District of New Jersey for pet food recall claims pending in federal court. *See* Conditional Transfer Order, a true and accurate copy of which is attached as Exhibit 1.

The JPML issued a Conditional Transfer Order for this case on August 20, 2007, finding that this case appears to involve questions of fact common to the other 77 actions transferred to the Pet Food Litigation MDL as of the date of that order. *Id.* Thereafter, Plaintiffs moved to remand this action to state court.

Menu Foods believes that federal jurisdiction is proper and that judicial economy dictates that the case be transferred to the Pet Food Litigation MDL. *See*

28 U.S.C. § 1407(a) (MDLs "promote the just and efficient conduct of [transferred] actions").

Thus, the parties appear to agree that this case should not proceed in this Court.

The sole basis on which Plaintiffs oppose the Motion to Stay is that judicial economy weighs in favor of this Court addressing the jurisdictional issue raised in their Motion to Remand, filed simultaneously with their Opposition to the Motion to Stay. Defendants do not object to this Court addressing the Motions to Stay and Remand at the same time.

If, as anticipated, this Court denies Plaintiffs' Motion to Remand, Plaintiffs offer no reason why the proceedings in this Court should not be stayed. Plaintiffs do not claim that a stay in this Court will cause them any prejudice, nor do they dispute the hardship and prejudice to Menu Foods described in the Memorandum in support of the instant Motion if this action is not stayed. In the absence of a stay, Menu Foods may face duplicative and costly discovery and pretrial motion practice in multiple jurisdictions, and it will risk inconsistent rulings. These reasons have led numerous district courts to stay actions pending final rulings on transfer by the JPML. *See, e.g., Kavalir v. Medtronic*, ____ F. Supp. 2d ___, 2007 WL 1225358 * 1, *4 (N.D. Ill. Apr. 19, 2007); *Jones v. Lewis*,

2006 WL 1006881 *1(W.D. Tenn. 2006) (unpublished); *Kennedy v. Novartis Pharm. Corp.*, 2002 WL 31051601 *1 (E.D. La. 2002) (unpublished); *see also Smith v. Mail Boxes, Etc., USA, Inc.*, 191 F. Supp. 2d 1155 (E.D. Cal. 2002) (staying further proceedings pending final ruling by the JPML on transfer after denying motion to remand).

CONCLUSION

For these reasons, judicial economy will be served by staying this action pending its transfer to the MDL, if the case remains in federal court.

WHEREFORE, Menu Foods respectfully requests that this Honorable Court grant this Motion and enter an Order staying further proceedings in this action pending its transfer to the MDL.

DATED: Honolulu, Hawaii, August 30, 2007.

/s/ Barbara J. Kirschenbaum
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